



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Louis R. Vermette
19 Hitching Post Road
PO Box 850
Lakeville, MA 02347

Re: 775 West Shore Rd, Alexandria, NH
Shoreland File #2005-00903

ADMINISTRATIVE ORDER
No. WD 06-027

June 27, 2006

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to Louis R. Vermette pursuant to RSA 483-B and pursuant to RSA 482-A:6. This Administrative Order is effective immediately upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly-constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, New Hampshire.
2. Louis R. Vermette is an individual having a mailing address of 19 Hitching Post Rd, PO Box 850, Lakeville, MA, 03247.

C. STATEMENTS OF FACTS AND LAW

1. Pursuant to RSA 483-B, the Comprehensive Shoreland Protection Act ("CSPA"), the Department of Environmental Services ("DES") regulates development activities in the protected shoreland zone established under the CSPA. Pursuant to RSA 483-B: 17, the Commissioner of DES has adopted Env-Ws 1400 to implement this program.
2. Pursuant to RSA 483-B: 4 XVIII-b "Repair" means work conducted to restore an existing, legal structure by partial replacement of worn, broken, or unsound parts or to fix a specific defect, during which all of the exterior dimensions are intact and remain so during construction.
3. Pursuant to RSA 483-B: 4 XVIII-c "Replace in kind" means the substitution of a new structure for an existing legal structure, whether in total or in part, with no change in size, dimensions, footprint, interior square footage, and location, with the exception of changes resulting in an increase in the setback to public waters.
4. Pursuant to RSA 483-B: 4 II "Accessory structure" means a structure, as defined in paragraph XXII of this section, on the same lot and customarily incidental and subordinate to the primary structure, as defined in paragraph XIV of this section; or a use, including but not limited to paths,

driveways, patios, any other improved surface, pump houses, gazebos, woodsheds, garages, or other outbuildings.

5. Pursuant to RSA 483-B: 9 V (a) (1), where existing, a natural woodland buffer shall be maintained within 150 feet of the reference line. The purpose of this buffer shall be to protect the quality of public waters by minimizing erosion, preventing siltation and turbidity, stabilizing soils, preventing excess nutrient and chemical pollution, maintaining natural water temperatures, maintaining a healthy tree canopy and understory, preserving fish and wildlife habitat, and respecting the overall natural condition of the protected shoreland.

6. Pursuant to RSA 483-B: 9 V(a)(2)(A), not more than a maximum of 50 percent of the basal area of trees, and a maximum of 50 percent of the total number of saplings shall be removed for any purpose in a 20-year period. A healthy, well-distributed stand of trees, saplings, shrubs, ground cover, and their living, undamaged root systems shall be left in place.

7. Pursuant to Env-Ws 1405.03 (b), an accessory structure shall have a foot print no larger than 150 square feet.

8. Pursuant to Env-Ws 1405.04, all accessory structures shall be set back at least 20 feet from the reference line.

9. Pursuant to RSA 482-A, the Department of Environmental Services ("DES") regulates dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A: 11, I, the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.

10. RSA 482-A:3, I, states that "[no] person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from [DES]."

11. Louis R. Vermette is the owner of land located on West Shore Road in Alexandria, more particularly described on the Alexandria Tax Map as Map 202 Lot 63 ("the Property").

12. On April 28, 2005, DES received a complaint alleging the construction of a new accessory structure and removal of vegetation within the protected shoreline on the Property.

13. By letter dated May 7, 2005, DES notified Mr. Vermette of the complaint, requested that he refrain from further work, and respond to the allegation in writing within 20 days of receipt of the letter.

14. On May 12, 2005, DES personnel conducted a site inspection of the Property and observed the following:

- a. An enclosed structure measuring approximately 14 ft x 14 ft with a open 4 ft wide deck on the lake side was constructed on the north end of the property within 20 feet of the reference line to Newfound Lake;

- b. A deck measuring approximately 16 ft x 16 ft was being constructed immediately south and contiguous to the enclosed structure;
- c. The enclosed structure was supported by four (4) 12" HDPE culverts filled with concrete, placed in and above the bank and potentially below the normal high water line on Newfound Lake;
- d. DES documented approximately 18 saplings and shrubs that were cut or removed within the footprint of the enclosed structure;

15. On June 5, 2006, DES received notification that the Property had been listed for sale by Century 21 Country Lake Realty.

16. On June 5, 2006, DES spoke with a representative of Century 21 Country Lake Realty to notify them of the violations.

D. DETERMINATION OF VIOLATIONS

- 1. Louis R. Vermette has violated RSA 483-B: 9 V (a) (2) (A), I, by failing to maintain a well distributed stand of trees and saplings.
- 2. Louis R. Vermette has violated Env-Ws 1405.04, by placing an accessory structure within 20 feet of the reference line.
- 3. Louis R. Vermette has violated Env-Ws 1405.03 (b), by constructing an accessory structure larger than 150 square feet located between the primary building line and the reference line.
- 4. Louis R. Vermette has violated RSA 483-B: 4 XVIII-c by failing to replace in kind the existing accessory structure with no change in foot print or location.
- 5. Louis R Vermette has violated RSA 482-A:3, I by installing two structural supports in the bed and banks of Newfound Lake without obtaining a permit from DES.

E. ORDER

Based on the above findings, DES hereby orders Louis R. Vermette as follows:

- 1. **Within 30 days of the date of this Order**, submit to DES for approval, a removal/restoration plan to remove the enclosed 14 ft x 14 ft structure, attached 4 ft wide deck, and all supporting structures, to reduce the 16 ft by 16 ft deck to the previously existing 10 ft x 14 ft dimensions, and to reestablish a well distributed stand of saplings and shrubs in the location of the enclosed structure. The removal/restoration plan shall be prepared by an environmental professional and include the following:
 - a. Existing and proposed conditions with dimensions and drawn to scale, including the limits of full lake elevation, the concrete retaining wall, decks, the docking structure and prospered plantings;
 - b. A plan for removing all portions of the enclosed structure, attached deck, supports, and

reduction of the 16 ft x 16 ft deck;

c. A detailed description of the proposed planting plan for the restoration of a well distributed stand of vegetation in the area where the enclosed structure is to be removed and control of invasive species such as purple loosestrife (*Lythrum salicaria*) and common reed (*Phragmites australis*);

d. A detailed method of sediment, erosion, and turbidity control (turbidity boom, silt fence, hay bales, etc.); and

e. A proposed removal schedule and construction sequence listing equipment and methods for accomplishing removal/restoration, as well as an anticipated restoration compliance date.

2. **Implement** the removal/restoration plan proposed in accordance with Item E.1, above only after receiving written approval, and as conditioned, by DES.

Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Jeffrey D. Blecharczyk, Shoreland Compliance Coordinator
DES Water Division
P.O. Box 95
Concord, NH 03302-0095
Fax: (603) 271-6588
e-mail: jblecharczyk@des.state.nh.us

F. APPEAL

Any person aggrieved by determinations D.1 through D.4 of this Order may appeal the Order to the New Hampshire Water Council in accordance with RSA 483-B:14 and NH Administrative Rules Env-WC 200. Such appeal must be filed with the Council within 30 days of the date of this Order and must be addressed to Chairman, Water Council, PO Box 95, Concord, NH 03302-0095. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>.

Any person aggrieved by determination D.5 of this Order may request DES to reconsider that determination within 20 days of the date of the Order. The request for reconsideration must comply with Wt 203.01(d) (copy attached), and will be processed in accordance with Wt 203.01(e)-(j). Any party not satisfied with the decision on reconsideration may appeal to the Wetlands Council. Please note that under RSA 482-A: 10, II, the Council may not consider any ground that is not set forth in the request for reconsideration.

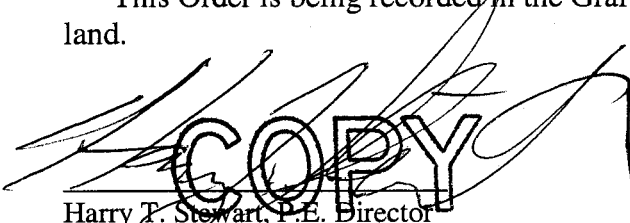
Filing an appeal or request for reconsideration of the Order will not automatically relieve Louis R. Vermette of the obligation to comply with the Order.

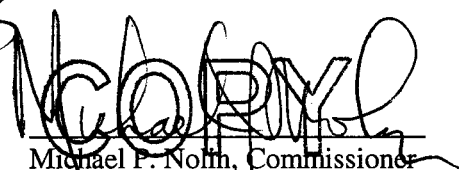
G. OTHER PROVISIONS

Please note that RSA 483-B:18, RSA 482-A:13 and 482-A:14 provide for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself.

DES will continue to monitor Louis R. Vermette for compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Grafton County Registry of Deeds so as to run with the land.


Harry T. Stewart, P.E. Director
Water Division


Michael P. Nolin, Commissioner
Department of Environmental Services

Certified Mail: 7006 0100 0005 8153 5269

cc: Gretchen Hamel, Legal Unit Administrator
Public Information Officer, DES PIP Office
Jennifer Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Alexandria Conservation Commission
Alexandria Board of Selectmen
Ken Ivestor, Century 21 Country Lake Realty